

REMARKS/ARGUMENTS

In response to the Final Office Action mailed April 12, 2010 Applicants propose to amend their application and request reconsideration in view of the proposed amendments and the following remarks. In this amendment, claim 1 is proposed to be amended, no claims have been cancelled without prejudice and no claims have been added, so that claims 1 and 6-8 are currently pending. No new matter has been entered.

Claims 1 and 6-8 were rejected under 35 USC 112, second paragraph. Applicants have proposed to amend claim 1 to more clearly claim the invention. Accordingly, reconsideration and withdrawal of the rejection is respectfully submitted.

Claims 1 and 6-8 were rejected as being unpatentable over US Patent Publication No. 2002/0133183 to Lentz et al. (Lentz), U.S. Patent Application No. 2002/0004679 to Eury et al. (Eury), US 2003/0065382 to Fischell et al. (Fischell) and WO 96/34003 to Shull et al. (Shull). This rejection is respectfully traversed.

In order to make a finding of obviousness, an Examiner must (1) determine the scope and content of the prior art, including non-analogous art if it is in the field of endeavor reasonably related to the particular problem to which the claimed invention is directed, (2) ascertain the differences between the claimed invention and the prior art, considering both the prior art and claimed invention as a whole, and (3) resolve the level of ordinary skill in the art at the time of the invention, factoring in the creativity that one of ordinary skill in the art would employ as well as the Examiner's own knowledge and technical expertise.

It is respectfully submitted that the references taken as a whole fail to disclose or suggest all of the claimed limitations. The present invention claims a medical device comprising an implantable structure, a basecoat matrix, including a combination of rapamycin and topotecan, in therapeutic dosages, incorporated in a first polymeric

material, the basecoat matrix being affixed to the surface of the implantable medical device, and a topcoat, including a second polymeric material, affixed to the basecoat matrix for controlling the elution rate of the rapamycin and the topotecan, the topotecan being present in a concentration of about seventy-five nanomolar to about three-hundred nanomolar, wherein the first polymeric material comprises a fluoropolymer comprising polyvinylidene fluoride and hexafluoropropylene in a sixty/forty weight ratio and the second polymeric material comprises polybutylmethacrylate, wherein the first and second polymeric materials are immiscible with respect to one another.

Lentz discloses a medical device coated with various drugs and polymers. Fischell discloses a stent coated with a number of polymers, a number of drugs, including sirolimus. The drugs may be on the surface of the polymer or mixed in with the polymer. Eury discloses a stent coated with a topoisomerase inhibitor for treating restenosis. The stent may be fabricated from a polymer loaded with topotecan plus other drugs. Shull discloses the use of various analogs of camptothecin.

The references taken as a whole fail to disclose or even suggest a medical device with two specific drugs in a specific dosage in a two distinct polymer structure with a specific polymer ratio. None of the references taken as a whole disclose the use of immiscible polymers on the same device as claimed. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

Applicant would be grateful for the opportunity to conduct a telephonic or in-person interview if the Examiner believes it would be helpful in disposing of the present case.

A favorable action on the merits is earnestly solicited.

Respectfully submitted,

/Carl J. Evens/

By: _____
Carl J. Evens
Reg. No. 33,874

Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003
(732) 524-2518
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